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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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MICHAEL KEVIN HANSEN,  
  
Petitioner,

v.

UNITED STATES OF AMERICA,  
  
Respondent.

**MEMORANDUM DECISION AND  
ORDER DENYING [69] MOTION FOR  
COMPASSIONATE RELEASE**

Case No. 1:03-cr-00080-DBB

District Judge David Barlow

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Petitioner Michael Kevin Hansen brings a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A).<sup>1</sup> Because Petitioner has not established “extraordinary and compelling reasons” that warrant sentence reduction, Petitioner’s motion is DENIED.

**BACKGROUND**

In 2005, Petitioner was sentenced to a mandatory minimum 240-month sentence for distribution of methamphetamine.<sup>2</sup> He has served most of his sentence and now brings an action for compassionate release under 18 U.S.C. § 3582(c)(1)(A).<sup>3</sup>

**STANDARD**

The district court may only grant a motion under 18 U.S.C. § 3582(c)(1)(A) if three requirements are met. First, the district court must find that extraordinary and compelling reasons

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<sup>1</sup> Motion For Compassionate Release, ECF. No. 69.

<sup>2</sup> Judgment as to Michael Kevin Hansen, ECF No. 56 at 1.

<sup>3</sup> ECF No. 69 at 5.

warrant the sentence reduction.<sup>4</sup> Second, the district court must find that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.<sup>5</sup> And finally, the district court must consider the factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable.<sup>6</sup> “[D]istrict courts may deny compassionate-release motions when any of the three prerequisites . . . is lacking and do not need to address the others.”<sup>7</sup>

## DISCUSSION

### **I. Petitioner has not shown that there are “extraordinary and compelling reasons” that warrant release.**

To obtain a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), a petitioner must show that there are “extraordinary and compelling reasons that warrant such a reduction.”<sup>8</sup> “[D]istrict courts, in applying [this test], have the authority to determine for themselves what constitutes ‘extraordinary and compelling reasons.’”<sup>9</sup> That authority is circumscribed by the second part of the test for sentence reduction—that the reduction is consistent with applicable policy statements issued by the sentencing commission.

The statute does not define the phrase “extraordinary and compelling reasons.” The Tenth Circuit has held that the United States Sentencing Commission (“USSC”) definition of the phrase is not binding in cases in which a prisoner initiates a motion for compassionate release.<sup>10</sup> Still, the court considers that the USSC definition provides helpful guidance in determining

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<sup>4</sup> *United States v. McGee*, 992 F.3d 1035, 1042 (10th Cir. 2021).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1043 (quoting *United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021)).

<sup>8</sup> 18 U.S.C. § 3582(c)(1)(A)(i).

<sup>9</sup> *McGee*, 992 F.3d at 1045.

<sup>10</sup> *United States v. Maumau*, 993 F.3d 821, 836 (10th Cir. 2021).

whether Petitioner's circumstances warrant relief.<sup>11</sup> The USSC policy statement provides that "extraordinary and compelling reasons" exist for a medical condition when the defendant is "suffering from a terminal illness;" "suffering from a serious physical or medical condition," "suffering from a serious functional or cognitive impairment," or "experiencing deteriorating physical or mental health because of the aging process" that "substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover."<sup>12</sup> The policy statement also explains that "extraordinary and compelling reasons" exist due to age if "the defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment."<sup>13</sup> Finally, the policy statement explains that "extraordinary and compelling reasons" can exist for family circumstances in the case of "[t]he death or incapacitation of the caregiver of the defendant's minor child" or "[t]he incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner."<sup>14</sup> While this court is not bound by these definitions, it considers them in evaluating Petitioner's arguments.

Petitioner makes three arguments as to why his circumstances constitute extraordinary and compelling reasons to justify a sentence reduction. First, Petitioner argues that he would

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<sup>11</sup> See *United States v. Deucher*, No. 2:16-cr-00189-DN, 2021 WL 1264566, at \*2 (D. Utah 2021); *United States v. Carr*, 851 F. App'x 848, 854 (10th Cir. 2021) (unpublished) ("it was within the district court's discretion to conclude the application notes to USSG § 1B1.13 still provided the best definition and description of "extraordinary and compelling reasons" under the circumstances of Ms. Carr's case. . . .").

<sup>12</sup> U.S.S.G. § 1B1.13 cmt. n. 1(A)(i)–(ii).

<sup>13</sup> *Id.* § 1B1.13 cmt. n. 1(B).

<sup>14</sup> *Id.* § 1B1.13 cmt. n. 1(C)(i)–(ii).

have received a substantially lower sentence if sentenced today.<sup>15</sup> Second, Petitioner argues that his “compromised family history, his history of substance abuse, his extreme hardship while incarcerated, and his current family needs are all mitigating factors that weigh in favor of granting compassionate release.”<sup>16</sup> Finally, Petitioner argues that he is severely susceptible to contracting and dying from COVID-19.<sup>17</sup> The court examines these arguments in turn.

First, Petitioner points to his 240-month sentence and contends that a sentence reduction is justified because, if sentenced today, he would not be subject to the same mandatory minimums and could likely receive a shorter sentence.<sup>18</sup> The Tenth Circuit has recognized that the mere fact that a defendant is serving a pre-First Step Act mandatory minimum sentence “cannot, standing alone, serve as the basis for a sentence reduction under § 3582(c)(1)(A)(i).”<sup>19</sup> Instead, only “the combination of such a sentence and a defendant’s unique circumstances” can constitute “extraordinary and compelling reasons.”<sup>20</sup> Accordingly, Petitioner’s 240-month mandatory minimum sentence alone is not an extraordinary and compelling reason to justify sentence reduction.

Next, Petitioner outlines a variety of factors that he argues favor sentence reduction, including his “compromised family history, his history of substance abuse, his extreme hardship while incarcerated, and his current family needs. . . .”<sup>21</sup> Petitioner hopes to spend time with his 90-year-old stepfather and his son who he reports suffers from mental disabilities.<sup>22</sup> He contends

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<sup>15</sup> ECF No. 69 at 5.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 12.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. 2021).

<sup>20</sup> *Id.*

<sup>21</sup> ECF No. 69 at 9.

<sup>22</sup> *Id.*

that his son's mother is a drug addict and his stepfather's health is deteriorating—he wishes to assist in caring for his son and stepfather.<sup>23</sup> These desires are admirable, but the circumstances are not sufficiently unusual to constitute extraordinary and compelling reasons for sentence reduction. The USSC policy statement provides guidance that extraordinary and compelling reasons could be found where the caregiver of the defendant's minor child is dead or incapacitated.<sup>24</sup> But Petitioner does not contend that the caregiver of his son, who apparently is Petitioner's sister,<sup>25</sup> is incapacitated, only that his son's mother is a drug addict. And the age or health of a stepparent is not sufficient, standing alone, to constitute extraordinary and compelling reasons for a sentence reduction because many inmates have aged or ailing parents. Petitioner has not made a showing that his son's caregiver is incapacitated or that, independent of the policy statement, there are other unique circumstances that rise to the level of extraordinary and compelling reasons to justify sentence reduction.

Finally, Petitioner argues that his medical circumstances support a sentence reduction.<sup>26</sup> Petitioner points to his medical history and argues that he is severely susceptible to contracting COVID-19, and that the Bureau of Prisons is not sufficiently preventing transmission of the virus.<sup>27</sup> Petitioner outlines his medical problems, including hepatitis C, seizure medication, collapsed arches, extreme swelling of both legs, and poor blood circulation.<sup>28</sup> None of these conditions rise to the level of a “terminal illness” or a “serious physical or medical condition . . .

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<sup>23</sup> *Id.* at 5, 9.

<sup>24</sup> U.S.S.G. § 1B1.13 cmt. n. 1(C)(i)–(ii).

<sup>25</sup> ECF No. 71-2 at 13.

<sup>26</sup> ECF No. 69 at 12.

<sup>27</sup> *Id.* at 12–14.

<sup>28</sup> *Id.* at 12.

that substantially diminishes the ability of the defendant to provide self-care.”<sup>29</sup> Nor is the court aware that these conditions substantially increase his COVID-19 risk. The risk of COVID-19 transmission is not unique to Petitioner. Furthermore, the Petitioner received his COVID-19 vaccination in March 2021.<sup>30</sup> Petitioner’s medical circumstances do not constitute “extraordinary and compelling reasons” for a sentence reduction under the USSC policy statement and, independent of that statement, are not otherwise unique circumstances that would justify a sentence reduction.

While not relevant to the “extraordinary and compelling circumstances” inquiry, the court notes that Petitioner repeatedly states that he has never been convicted of a violent crime, apparently to suggest that he poses no safety risk to the community.<sup>31</sup> While Petitioner was not convicted of a violent crime, he was in possession of a loaded gun when he was arrested for one offense and a double-edged knife when he was arrested on another occasion.<sup>32</sup> Accordingly, defendant’s argument regarding safety is not well-taken.

### **ORDER**

Petitioner has been incarcerated for many years and understandably wishes to be released early. But because Petitioner has not established “extraordinary and compelling reasons” that warrant sentence reduction, Petitioner’s motion to for compassionate release must be DENIED.

Signed September 9, 2021.

BY THE COURT

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<sup>29</sup> U.S.S.G. § 1B1.13 cmt. n. 1(A)(i)–(ii).

<sup>30</sup> United States’ Opposition to Defendant’s Motion for Compassionate Release, ECF No. 70 at 3.

<sup>31</sup> ECF No. 69 at 4.

<sup>32</sup> ECF No. 71-2 at 8.

A handwritten signature in blue ink, appearing to read 'David Barlow', is positioned above a horizontal line.

David Barlow  
United States District Judge